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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,710	07/07/2003	David H. McFadden		7944

7590

08/18/2005

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1103 Concord Avenue
Southlake, TX 76092

EXAMINER

COCKS, JOSIAH C

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 08/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/614,710	Applicant(s) MCFADDEN, DAVID H.	
	Examiner Josiah Cocks	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 June 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/1/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed 6/01/05 is acknowledged.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 4-6, 8, and 10-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,058,924 to Pool, III et al. ("Pool") in view of U.S. Patent No. 4,327,279 to Guibert ("Guibert") (previously cited).

Pool discloses in Figures 1-4 an invention similar to that described in applicant's claims 4-6, 8, and 10-20. In particular, Pool shows a cooking oven with a flow means in the form of a blower (24) circulating and gas, and a gas directing means (30). Pool further discloses that thermal means for heating the gas and notes that possible means are electric heating elements and microwave/electromagnetic sources (see col. 4, lines 52-54 and col. 6, lines 6-8). While Pool does not explicitly recite the use of a sheathed heater or a gaseous fuel heater, these types of heaters are well known in the art and would be included in the disclosure of heating means by Pool. Accordingly, OFFICIAL NOTICE is taken as to the existence and use of these well-known types of heaters in the cooking oven art.

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Pool also discloses a control means (e.g. thermal sensor regulating heating means) (see col. 4, lines 55-58) and an egress opening (60) including a catalyst (62). The oven is operable as a speed cooking oven and recycling oven (note Abstract).

Pool does not appear to disclose a second gas directing means or at least one additional par if gas directing means.

Guibert teaches a food heating device in the same field of endeavor as Pool. In Guibert, the heating device includes a housing (10) with a heated area. Within the area is a compartment (14) that includes an arrangement of multiple pairs of gas/air directing means (holes in each of each of panels 14a-c, Fig. 3) that are arranged such that forced gas/air from a controlled blower passes through these means collide with each other (See Fig. 2)

Therefore, in regard to claims 4-6, 8, and 10-20, it would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the cooking oven of Pool to incorporate the multiple gas directing means of Guibert to create high velocity flows to rapidly transfer heat to a food item to be heated (see Guibert, col. 6, lines 42-56).

4. Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pool in view of Guibert as applied to claim 4 and 8 above, and further in view of U.S. Patent No. 6,060,701 to McKee et al. ("McKee").

Pool in view of Guibert teach all the limitations of claims 7 and 9 except for a damper means and possibly for a variable speed motor for the blower.

McKee teaches a speed cooking oven in the same field of endeavor as Pool. In McKee, it is recognized that a conduit (20) providing for the circulation of air (i.e. gas, see col. 3, lines 40-

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42) may include a damper to modify the air flow through the conduit. McKee also discloses the use of a variable speed blower but notes that a damper also desirably serves to provide a similar effect as a variable speed blower when a fixed speed blower is employed (see col. 5, lines 55-59).

Therefore, in regard to claims 7 and 9, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the oven of Pool to incorporate the damper and variable speed blower as taught in McKee to desirably control the volume of air flow to provide the desired thermal energy for the cooking chamber (see McKee, col. 5, lines 50-59).

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-3 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 6,874,495 ("495 patent") in view of U.S. Patent No. 6,060,701 to McKee et al. ("McKee").

Claims 1-3 of the '495 patent describe the same invention as claims 1-3 of the instant application with the exception of the recitation of a damper means for adjusting the amount of gas delivered via conduit means to the gas directing means.

McKee teaches a speed cooking oven in the same field of endeavor as the '495 patent. In McKee, it is recognized that a conduit (20) providing for the circulation of air (i.e. gas, see col. 3, lines 40-42) may include a damper to modify the air flow through the conduit. This damper also desirably serves to provide a similar effect as a variable speed blower when a fixed speed blower is employed (see col. 5, lines 55-59).

Therefore, in regard to claims 1-3 it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the oven recited in claims 1-3 of the '495 patent to incorporate a damper as taught in McKee to regulate air/gas flow through a conduit as desired (see col. 5, lines 55-59).

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patents to Tanaka et al. and Smith ('911) are cited to further show the state of the art concerning colliding air flows. Smith et al. ('435) is cited to further show the state of the art concerning dampers in ovens.


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on weekdays from 8:00 AM to 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter, can be reached at (571) 272-4475. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Any questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

jcc
August 12, 2005


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749